



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF O-I-S- INC.

DATE: NOV. 29, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an IT development services company, seeks to employ the Beneficiary as a business analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that it had a *bona fide* job offer of full-time permanent employment for the Beneficiary.

On appeal the Petitioner asserts that the Director misinterpreted the evidence in the record, and asserts that its job offer to the Beneficiary is for full-time permanent employment.

Upon *de novo* review, we have identified a preliminary issue that must be resolved before evaluating the *bona fide* nature of the job offer. Specifically, the record appears to indicate that the petition was not filed with a valid labor certification. As such, we will remand the case for further development of the record and the issuance of a new decision.

**I. LAW**

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

## II. ANALYSIS

In our adjudication of this appeal we will not consider the *bona fides* of the job offer, the issue on which the Director's denial decision is based, because a more fundamental issue must first be resolved – specifically, whether the Form I-140, Immigrant Petition for Alien Worker (I-140 petition), was filed with a valid labor certification. A petition for advanced degree professional classification must generally be accompanied by an individual labor certification from the DOL. *See* 8 C.F.R. § 204.5(k)(4)(i). A petition that lacks a required individual labor certification is not considered properly filed. *See* 8 C.F.R. § 204.5(a)(2).

Any I-140 petition based on a labor certification that was certified by the DOL on or after July 16, 2007, must be filed within 180 days of the DOL certification. *See* 20 C.F.R. § 656.30(b)(1). Any labor certification approved on or after July 16, 2007, expires 180 calendar days after certification unless the employer uses the labor certification prior to expiration in support of an I-140 petition filed with USCIS. *Id.* In this case the Petitioner's labor certification application (ETA Form 9089) was certified by the DOL on September 8, 2016. Under the above regulation, therefore, the labor certification was valid until March 7, 2017, and would remain valid only if filed in support of an I-140 petition submitted to USCIS by that date.

The I-140 petition in this case was received and processed by the Texas Service Center (TSC) on May 15, 2017. A photocopy of the labor certification with signatures of the Petitioner, the Beneficiary, and the Preparer, all dated May 8, 2017, accompanied the petition. In a communication with the TSC, however, the Petitioner claimed that it filed an I-140 petition with an original labor certification for the same Beneficiary on March 1, 2017. The Petitioner contends, therefore, that the labor certification remained valid because it was initially filed with an I-140 petition prior to its expiration date. However, information in the record appears to contradict the Petitioner's claims.

The record indicates that the Petitioner contacted the TSC through its attorney on March 11, 2017, and asked whether there was any record of the I-140 petition having been filed. The Petitioner subsequently provided a copy of a Federal Express shipping label, claiming that it showed the I-140 petition for this Beneficiary was mailed on February 28, 2017, and delivered to USCIS on March 1, 2017. On March 22, 2017, the Petitioner provided a partial copy of unprocessed check #4311 with the company name and bank account number ending in \*3510 printed on the face, and the notation "Fee I-140 [REDACTED] printed in the memo line.. The Petitioner claimed that the I-140 petition for the instant Beneficiary was previously "filed with another applicant – [REDACTED] The Petitioner also submitted a complete copy of unprocessed check #4311 in the amount of \$700.00, dated February 24, 2017, along with a partial bank statement for the account number ending in \*3510, which showed that check #4311 was processed on March 2, 2017.

Based on the foregoing information, the TSC accepted the Petitioner's assertion that USCIS had lost an I-140 petition for the Beneficiary on or after receiving it on March 1, 2017. Accordingly, the TSC requested a duplicate of the original labor certification from the DOL, and allowed the Petitioner to reconstruct and submit the I-140 petition and related evidence, assigning the reconstructed filing receipt number [REDACTED]

We have obtained additional information, however, that casts doubt on the Petitioner's claims. First, it appears that the Petitioner's claim that the unprocessed check #4311 is the one that USCIS accepted on March 1, 2017, is false. While the unprocessed check #4311 submitted by the Petitioner is in the amount of \$700.00,<sup>1</sup> the partial bank statement submitted as evidence that USCIS cashed the check shows that processed check #4311 was in the amount of \$750.00. The Petitioner's correspondence with the TSC does not discuss this discrepancy.

USCIS has retained a copy of the actual processed check #4311 drawn on the Petitioner's account, which was in the amount of \$750.00 and dated January 31, 2017. The memo portion of the processed check states "I-485," which indicates it was paying the filing fee for a Form I-485, Application to Adjust Status or Register Permanent Residence. Thus, the date, the amount, and the memo line all differ between the actual processed check #4311 and the unprocessed check #4311 which the Petitioner claims to have sent to the TSC. USCIS records show that the processed check #4311 was accepted with a transaction relating to the filing of documents of individuals other than the Beneficiary. USCIS did not cash the check which the Petitioner claims to have written, and the Petitioner appears to have provided false evidence in support of its claim to have timely filed the I-140 petition with the required filing fee.

In a further attempt to show that USCIS lost the original I-140 petition, the Petitioner's attorney claimed in an email dated March 22, 2017, that the "missing" I-140 petition was "filed with another applicant – [REDACTED]"<sup>2</sup> In a letter accompanying the I-140 petition filed on May 15, 2017, the Petitioner's attorney asserted that the Petitioner "filed an I-140 petition with an original ETA 9089 for the same Beneficiary on March 1, 2017." Although a Fedex shipping label was provided showing that the Petitioner mailed something to USCIS on March 1, 2017, that mailing could not have included the I-140 petition with receipt number [REDACTED] because USCIS records show that this particular I-140 petition was mailed on March 7, 2017,<sup>3</sup> approximately six days after the Petitioner claims to have mailed the instant petition. Therefore, the Petitioner could not have mailed the I-140 petition with receipt number [REDACTED] together with the instant petition on March 1, 2017. In view of these contradictory claims, the Petitioner appears to have knowingly misrepresented the date and manner in which the instant I-140 petition was filed in order to bring it within the 180-day validity period of the labor certification that accompanied it. As such, it appears that the Petitioner did not file the labor certification with an I-140 petition until May 15, 2017; at which time the labor certification was expired. An I-140 petition for advanced degree professional classification filed without a valid labor certification must be denied. *See* 8 C.F.R. § 204.5(a)(2).

Furthermore, USCIS may deny a visa petition if the petitioner submits evidence which contains false information. If a petition includes serious errors and discrepancies, and the petitioner fails to resolve

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<sup>1</sup> The required filing fee for a Form I-140 petition is \$700.00. 8 C.F.R. § 103.7(b)(1)(i)(N).

<sup>2</sup> This receipt number is for a Form I-140 petition filed by the Petitioner on behalf of a different beneficiary.

<sup>3</sup> Because the Petitioner mailed the I-140 petition with the receipt number [REDACTED] by same-day service, our records also show that USCIS received and date-stamped it as properly filed on March 7, 2017.

those errors and discrepancies after USCIS provides an opportunity to rebut or explain, then USCIS will conclude that the facts stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The submission of false documents relating to a petition could also lead to a finding of fraud or willful misrepresentation of a material fact against the Petitioner.

### III. CONCLUSION

For the reasons discussed above, we will remand this case to the Director to determine whether the instant I-140 petition is supported by a valid labor certification, and whether a finding of fraud or willful misrepresentation of a material fact against the Petitioner is warranted.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of O-I-S- Inc.*, ID# 1654578 (AAO Nov. 29, 2018)